

Avtar Krishan Sood and another v. State of Haryana and others
(M. M. Punchhi, J.)

seems to have been misled to file a revision as the order passed was not of acquittal but of a discharge and the order also did not show the facts of the case at all as to when the police report was filed, as to whether the charge had been framed or not and also as to whether any witnesses have been examined or not. The trial Court conspicuously observed silence on these questions by accepting the said application and by discharging the petitioner.

(7) With the above discussion, I am of the view that the discharge order amounted to an acquittal as, according to the provisions of section 248 of the Code, after framing of the charge if the Magistrate finds the accused not guilty, he has to record an order of acquittal and if he finds the accused guilty, the accused has to be sentenced after hearing him on the question of sentence. There is no alternative for the Magistrate to pass any other order than the order of acquittal if he finds the accused not guilty. Once the lower revisional Court has come to the conclusion that the discharge order amounted to an acquittal, it has no further jurisdiction to deal with the matter.

(8) In this view of the matter, this petition is allowed and the order of the lower revisional Court is set aside. In case the State wants to challenge the order of the trial Court, it has to file a criminal appeal before this Court and seek condonation of delay if the State is so advised.

R.N.R.

Before M. M. Punchhi and Amarjeet Chaudhary, JJ.

AVTAR KRISHAN SOOD and another,—Petitioners.

versus

STATE OF HARYANA and others,—Respondents.

Civil Writ Petition No. 3989 of 1988

August 4, 1988.

Haryana Urban Development Authority Act (XIII of 1977)—Application for allotment of residential plot in a particular sector—Lots drawn for such allotment—Formal allotment letters not issued—Plots available in that particular sector—Denial of allotment to such allottees—Validity of action of the Government.

Held, that the right of the applicants to alternative allotments in the same sector where they were allotted plots has been denied without any substantial reasons. When plots in sector 22, 23 and 23-A are available with the respondents it is not only their legal responsibility but also moral responsibility too to accommodate the petitioners first in these sectors. In a welfare State, it is needless to emphasise that the government of the day run the State not only with a sense of responsibility but with a great degree of morality. Therefore, unhesitatingly we curb the decision of the State in throwing open plots in the aforesaid three sectors for allotment or auction without meeting the legitimate due of the petitioners.

(Para 4).

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble court may be pleased to:—

- (i) *send for the record of the case;*
- (ii) *issue a writ of Mandamus directing the respondents to issue allotment letters to the petitioners and for further direction not to dispose of available plots in the same sector by auction without satisfying the legitimate claim of the petitioners.*
- (iii) *issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case of the petitioners.*
- (iv) *dispense with issuance of advance notice of motion to the respondents.*
- (vi) *dispense with the filing of the original certified copies of Annexures.*

AND

- (vii) *award the costs of the writ petition to the petitioners.*

C. M. Chopra, Advocate, for the Petitioners.

S. C. Mohunta, A.G. Haryana, A. Mohunta, Advocate with him, for Respondents 1 & 3.

V. K. Vasistha, Advocate, for Respondent No. 2.

JUDGMENT

M. M. Punchhi, J. (Oral).

These are six petitions being CWP Nos. 3989, 4193, 4345, 4346, 5759 and 5957 of 1988 which are placed before us at the motion stage.

Avtar Krishan Sood and another v. State of Haryana and others
(M. M. Punchhi, J.)

(2) Parties' counsel are agreed that in case of admission of these cases, stagnation is bound to occur, for neither would the petitioners get the relief which they ask for immediately nor would the respondents be able to arrange their affairs in a suitable manner. We, thus, with their consent, dispose of these petitions at the motion stage.

(3) Except for the petitioners in CWP No. 4346 of 1988, the remaining petitioners of the five cases applied for allotment of residential plots in Sectors 23 and 23-A at Gurgaon in an Urban Estate floated by the Haryana Urban Development Authority under the care and control of the State Government of Haryana. The petitioners in CWP No. 4346 of 1988 applied for a plot in Sector 22 thereof. Since there were far too many applicants, the HUDA resorted to draw of plots. Each petitioner on successful draw of lot was assigned the plot number which fell to his due. Since the formal allotment letters to the respective petitioners were being withheld by HUDA, they made enquiries and it turned out to be that the sites where plots of the petitioners were situated were either under litigation in this Court or the Supreme Court of India or were being thought of being released by the government to the landowners from whom the land was acquired. The petitioners in these circumstances asked for alternate plots in the same Sector but their prayer was turned deaf ear to. This gave rise to these petitions.

(4) In response to notice of motion, the respondents' plea is that the petitioners can have plots in alternative Sectors and at the price now prevailing. Their right to alternate allotments in the same sectors where they were allotted plots is being denied without any substantial reason. Our attention has been drawn to the press reports in which plots in Sector 22, 23 and 23-A have been thrown open to public by inviting applications for allotment and even for auction. When plots in Sectors 22, 23 and 23-A are available with the respondents, it is not only their legal responsibility but also moral responsibility too to accommodate the petitioners first in these Sectors. In a welfare State, it is needless to emphasise that the government of the day runs the State not only with a sense of responsibility but with a great degree of morality. Therefore, unhesitatingly we curb the design of the State in throwing upon plots in the aforesaid three Sectors for allotment or auction without meeting the legitimate due of the petitioners.

(5) As a sequel to the aforesaid discussion, we allow these petitions and direct the respondents to allot a plot each to the petitioners

in the same Sectors to which each has been held entitled for allotment, on the same terms and conditions as if the plot now to be allotted was originally allotted. Let the same be done within a period of one month from today and till that is done, we keep stayed allotment and auction of plots in these Sectors. In the circumstances we shall not burden the State with costs.

S. C. K.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

AMRIK SINGH AND ANOTHER,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Amended Civil Writ Petition No. 5058 of 1985

August 8, 1988.

Panjab University Calendar Volume I, Part I, 1969—Regl. 56—University employees—Retirement age 58 years—Such employees allocated to School Education Board—Subsequent change in retirement age of university employees—Such change before confirmation of allocation—Effect of such change on Board employees.

Held, that under Regulation 56(1) of the Punjab University Calendar Volume I, Part I, 1969, all whole time paid members of the administrative staff except class IV employees was to retire on attaining the age of 58 years. The regulation will determine the age of retirement of the petitioners and as per this regulation, the petitioners were to retire on attaining the age of 58 years. The decision of the Syndicate, dated November 17, 1979, only affirms the decision which was taken at the time of allocating services of some of the University employees to the service of the Board. It did not create any right in favour of the petitioners nor it can be interpreted to mean that till the final confirmation the petitioners would be deemed to be in the service of the University. The petitioners' terms and conditions of service were the one which were expressly intimated to them by the University at the time of their allocation in the Board. (Para 15).

Petition Under Articles 226/227 of the Constitution of India praying that a writ of Certiorari Mandamus or any other suitable writ direction or order be issued, directing the respondents :—

(i) *To produce the complete records of the case,*